

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 96-0615-ST
Sales and Use Tax
For Tax Years 1993, 1994, and 1995**

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ISSUE

Sales/Use Tax - Mobile anhydrous ammonia tank units with related and accessory equipment

Authority: IC 6-2.5-5-1, 45 IAC 2.2-4-27, 45 IAC 2.2-5-6(d)(3)

Taxpayer protested the proposed assessment of sales/use tax on the purchase and repair of the mobile anhydrous ammonia tank units.

STATEMENT OF FACTS

Taxpayer is an agricultural co-operative organized under the laws of Indiana. It engages in various marketing and sales among which is the sale of fertilizer. The focus of the protested proposed assessments is the sale of anhydrous ammonia. Taxpayer purchases anhydrous ammonia in bulk and stores it in a central storage facility at taxpayer's location. When the product is sold to a farmer it is trucked to the field in a container or tank that is mounted on a chassis and equipped with a tool bar. The audit imposed sales/use tax on the purchase of the containers or tanks a.k.a. nurse tank and the repair of same. The tool bar being the applicator; a pipe fitted with nozzles. The nozzles penetrate the soil surface and distribute the fertilizer into the ground from a reservoir as the unit is pulled by a tractor through the field.

Taxpayer purchased these nurse tanks without payment of sales or use tax. Further, taxpayer prices its fertilizer to include a cost associated with the nurse tank, however, this cost is not stated on an

invoice separate from the anhydrous ammonia. The complete package, fertilizer, nurse tank and tool bar are delivered to the farmer then returned to taxpayer, refilled and sent to the next customer.

DISCUSSION

The general exemption for transactions of tangible personal property relating to agricultural production are reserved to the farmer. See IC 6-2.5-5-1. The audit report recognized that the taxpayer was not a farmer but was an agricultural co-operative. As support for the proposed assessment; the report applied 45 IAC 2.2-5-6(d) which exempts the following:

. . .

(3) Fertilizers - Sales of agricultural machinery This exemption does not apply to . . . transportation equipment

The audit analysis focuses on the transportation i.e. moving the anhydrous ammonia from taxpayer's place of business to the farm field. The focus is too narrow as it failed to include the key role of the nurse tank in the application of the fertilizer to the crops. A wide angle look brings Information Bulletin #9 into the picture.

The Department under date of April 1992 issued Information Bulletin #9, Agricultural Production Exemptions. The Bulletin in terms of agricultural machinery, tools and equipment broadens the look to an object test. The object is raising crops and the object is achieved through applying the fertilizer to the crop land.

Anhydrous ammonia exists as a gas at atmospheric pressure, thus the only practical way the product can be utilized is when it is in a pressurized container. In this state it exists as a liquid. It is the liquid fertilizer that is injected just below the soil surface and is trapped when it turns to a gas. The nurse tanks are containers required in the application, hence Information Bulletin #9 is operative in this case and by its example is controlling.

FINDING

Taxpayer's protest is sustained.